



COUNTY OF LOS ANGELES
WORKFORCE DEVELOPMENT, AGING AND
COMMUNITY SERVICES



CONTRACT COMPLIANCE DIRECTIVE

DATE: September 20, 2018

NUMBER: WDACS-CCD-18-02

Sanctions and Remedies

EXECUTIVE SUMMARY

This directive transmits the policy and procedures for actions that WDACS may take as a result of a Subrecipient's failure to comply with the terms and conditions of its subaward. This Directive supersedes **Directive CD-15-18, "Sanctions and Remedies,"** dated July 1, 2016.

This Directive informs all Subrecipients of the sanctions that will be applied based upon non-compliance with the terms and conditions of their respective contracts. This Directive will also provide Subrecipients with the revised process that WDACS will follow when a Subrecipient is non-compliant, including the application of sanctions when attempts to resolve areas of non-compliance have been unsuccessful.

APPLICATION

This directive applies to all WDACS Subrecipients.

REFERENCES

- 2 CFR Chapter I and Chapter II, Parts 200, 215, 220, 225, and 230 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule

BACKGROUND

On December 26, 2013, the Office of Management and Budget revised the Uniform Administrative Requirements for Federal grants, combining those requirements with those of the audit requirements and cost principles. These regulations are codified at 2 CFR Chapter I and Chapter II, Parts 200, 215, 220, 225, and 230, became effective December 26, 2014, and are referred to as the Uniform Guidance. These rules contain the requirements that subrecipient institute and implement internal controls in the managing Federally funded subawards.

DEFINITIONS

Corrective action means action taken by the auditee that:

- a) Corrects identified deficiencies;
- b) Produces recommended improvements; or
- c) Demonstrates that audit findings are either invalid or do not warrant auditee action. (2 CFR 200.26)

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award. (2 CFR 200.31). In addition, disallowed costs may occur with State and/or local funds that are deemed disallowed.

Final determination is the awarding agency's decision to allow or disallow questioned costs and resolve any nonmonetary findings.

Final debt is the amount owed based on the awarding agency's final determination if an appeal is not filed, or the decision issued in response to an appeal. Included in final debts are funds due from, but not limited to, incidents of fraud, malfeasance, misapplication of funds or other serious violations or illegal acts.

High Risk Entity – An entity that:

1. Has a history of unsatisfactory performance;
2. Is not financially stable;
3. Has prior reviews disclosing a management system that did not meet the cash management standard as set forth in related federal guidelines;
4. Has not conformed to terms and conditions of previous awards;
5. Cannot demonstrate that it has:
 - a. A defined method to account for and report program income where appropriate;
 - b. A working understanding of the legislation, implementing regulations, circulars; and State and local policies impacting the award;
 - c. Sufficient staffing to ensure separation of duties;
 - d. Conducted an audit of its activities during the past year; and/or
 - e. Resolved administrative findings resulting from monitoring, audit, or other reviews;
6. Experienced a change in its key personnel or practices; and
7. Has a history of disallowed costs.

An entity that does not have prior experience managing federal grants may also be considered high risk.

Improper payment means:

1. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and
2. Improper payments, including any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper. (2 CFR 200.53)

Pass-through entity means a non-Federal entity that provides a subaward to a Subrecipient to carry out part of a Federal program. (2 CFR 200.74)

Stand-in costs are substituted costs, disbursed or accounted for from non-Federal funds, for unallowable subaward costs, for which there is a proven benefit, costs are for the same period and program, and have been audited.

Subaward is an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal, State, and/or local award received by the pass-through entity. It does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (2 CFR 200.92) For purposes of this Directive, the term contract or contractual also refers to subawards.

Subrecipient is a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal, State, and/or local program; but does not include an individual that is a beneficiary of such program. A Subrecipient, also known as a contractor and/or agency, may also be a recipient of other awards directly from a Federal, State, or local awarding agency. (2 CFR 200.93)

Suspension means an action by the awarding agency that temporarily withdraws funding under a subaward or suspends contract services, pending corrective action by the Subrecipient or pending a decision to terminate the subaward by the awarding agency.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of the performance period. (2 CFR 200.95)

POLICY AND PROCEDURES

The following actions by a Subrecipient will result in sanctions by the County of Los Angeles Workforce Development, Aging and Community Services (WDACS):

- Any funds paid to a Subrecipient in excess of the amount to which the Subrecipient is finally determined to be entitled under the terms of the subaward;
- Miss-expenditure of funds in violation of the terms and conditions of the subaward;
- Failure to repay final debts within the timeframes prescribed by WDACS;
- Failure to respond to WDACS in a timely manner;
- Willful disregard of the contract requirements, willful disregard of the requirement of the law, gross negligence, or failure to observe accepted standards of administration;
- Incidents of fraud, malfeasance, or misfeasance;
- Failure to comply with the contract's Performance Requirement Summary (PRS).

Sanction Authority

The Standard Terms and Conditions of each Contract, provides WDACS authority to sanction a Subrecipient for non-compliance. Only the Contracting Services Branch has the authority to apply sanctions to a Subrecipient. Sanctions will be applied by the Contract Management and Contracts Compliance Managers.

Sanction Types

There are eleven (11) types of sanctions that WDACS may, at its sole discretion, impose on its Subrecipients to address instances of non-compliance:

1. Suspension of payments;
2. Suspension of Contract services;
3. Termination of Contract;
4. Placement in the Contractor Alert Reporting Database (CARD);
5. Referral to the Office of the Los Angeles County Treasurer and Tax Collector;
6. Remanding the Subrecipient to the County Tax Assessor for collection and/or legal action;
7. Initiation of County Debarment proceedings;
8. Deeming the Subrecipient ineligible for further sub-awards from the County;
9. Notification to other County departments and/or the Board of Supervisors;
10. Notification to a Federal, State or local awarding agency; and/or
11. Any actions outlined in the contract's PRS.

The type of sanction(s) will depend on the issue of non-compliance and will be determined by the Contracts Compliance Division.

If WDACS does not obtain a satisfactory corrective action through the resolution process, or if the violations are of a more serious nature (e.g. fraud and abuse) and WDACS makes

a determination to forgo the resolution process in order to take immediate action, WDACS may pursue any of the following contract remedies against the Subrecipient:

1. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient;
2. Make an administrative offset against other requests for reimbursements;
3. Disallow all or part of the cost of the activity or action not in compliance;
4. Wholly or partially suspend or terminate the subaward;
5. Demand repayment of misspent funds utilizing funds from a non-Federal source;
6. Declare the Subrecipient high risk;
7. Take other remedies that may be legally available;
8. Any actions outlined in the contract's PRS; and/or
9. Impose any sanctions listed above, as applicable.

Revised Procedures

When a Subrecipient fails to provide the required documentation in a timely manner, WDACS will take the following actions:

1. Issue two warning letters/e-mails notifying the Subrecipient of the delinquency. These warning notifications will cite the contractual section that is delinquent and will also include the potential sanction(s) if the required documentation is not provided within the prescribed timeframe. Each warning notification will allow the Subrecipient two (2) business days to provide the required documentation.
2. Failure by the Subrecipient to provide the required documentation with the established two (2) day timeframe will result in WDACS sanctioning the Subrecipient by the close of the next (third) business day. The sanction notification will provide the Subrecipient's Executive Officer with:
 - (a) The reason for the sanction with the inclusion of contract language authorizing WDACS to apply sanctions;
 - (b) The non-compliance issue(s) quoting the Contract, law or regulation violation;
 - (c) A copy of the initial notification; and
 - (d) What the Subrecipient will need to provide to lift the sanction.

Debt Collection

In instances where the Subrecipient has misspent funds and WDACS does not obtain a satisfactory resolution or corrective action, the following debt collection procedures will apply:

WDACS will notify the Subrecipient in writing of the debt, its appeal rights, the date that the debt will be considered delinquent, and the sanctions if the debt is not repaid. Any

and all costs associated with the debt collection activities will be charged to the Subrecipient.

Methods of Repayment

The Subrecipient will be required to repay those funds through one of the following methods:

Lump Sum or Installments: A non-Federal or non-County repayment should be done expeditiously, either as a lump sum or as installments following approval by the County or when required by the funding agency, to resolve a debt. The maximum amount of time that may be allowed for the installment method of repayment is two years if approved by the County or funding agency. However, it is the intent to have repayment completed within the same fiscal year as the disallowance. A cash repayment is the only method of reimbursement when the miss-expenditure was due to:

- Willful disregard of the requirement of the law, gross negligence, or failure to observe accepted standards of administration.
- Incidents of fraud, malfeasance, or misfeasance.

Any debt involving fraud or abuse shall be repaid and cannot be offset by stand-in costs. No other means of settlement will be considered. Funds collected in repayment of these types of debts must be returned to WDACS and will be returned to the funding source. .

Failure to repay the disallowed costs within the prescribed timeframes will result in further imposition of sanctions.

Stand-in Costs: Stand-in costs are non-Federal costs that may be substituted, at the sole discretion of the County, for disallowed subaward costs when certain conditions are met. Stand-in costs must meet the following criteria:

- To be considered, proposed stand-in costs shall have been actually incurred allowable subaward costs that have not been charged to the subaward for tasks performed within the scope of work, included within the scope of the audit, and accounted for in the auditee's financial system as required in the Uniform Guidance. Cash match (i.e., expenditures of the organization used as match) in excess of the required match may also be considered for use as stand-in costs.
- To be accepted as stand-in costs, costs must come from the same fiscal year specified by the funding source, as the costs that they are proposed to replace, and they must not cause a violation of the administrative or other cost limitations. Each of the separate criteria for consideration of proposed stand-in costs is discussed below:

Criterion: Must be allowable costs that were actually incurred for the benefit of the subaward and paid by a non-Federal/County fund source. Thus, for example, the dollar value of in-kind donations cannot be recognized as stand-in costs. Also, inasmuch as costs must be net-of-credits under the governing cost principles, the dollar value of discounts cannot be considered as an allowable grant cost.

Criterion: Must have been included within the scope of the Subrecipient's single audit (not necessarily tested but potentially subject to testing). This means that the costs must be recorded and included in the financial statements presented by the Contractor to the auditor for audit. Failure to include unbilled costs disqualifies the costs for stand-in consideration.

Criterion: Must have been accounted for in the Subrecipient's financial system. This means that the unbilled expense must be recorded and documented in the subrecipient's books of accounts. It cannot be presented as a separate consideration outside the entity's accounting system.

Criterion: Must be adequately documented in the same manner as all other subaward costs. This means that the unbilled expense must be treated in a manner consistent with cost principles affecting other expenses, including but not limited to the cost allocation methodology, cost classification methodology, and supporting documentation requirements.

Caution: Stand-in costs cannot be created using circumstances or conditions that appear to be legitimate liabilities if no actual costs are incurred by any entity.

Example: The Subrecipient provides free space for a subaward program in a building that has been fully depreciated. The only facility-related costs the Subrecipient actually pays are for general maintenance. A liability created by the Subrecipient related to rental costs that were never paid is not a legitimate stand-in cost. The only legitimate stand-in cost available in this example, assuming that all recording and reporting requirements have been satisfied, is an allocable share of the general maintenance cost based on square footage occupied, or another allocation method that would be more equitable.

Certain costs, including in-kind contributions, are not considered unpaid subaward liabilities, but rather as in-kind match; therefore, they cannot be used as stand-in costs because they cannot be charged to the subaward. Examples of other costs that are not stand-in costs include:

- Uncompensated overtime,
- Unbilled premises costs associated with fully depreciated publicly owned buildings,
- Allocated costs derived from an improper allocation methodology,
- Discounts, refunds, rebates, and

- Any State share of the cost of State or community college tuition.

Effect of Sanctions on Future Funding

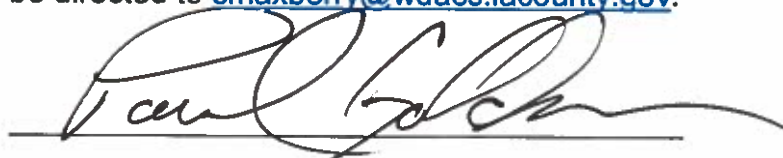
Sanctions will remain in effect until the Subrecipient becomes compliant. WDACS will consider the Subrecipient's non-compliance during future funding decisions. Failure on the part of a Subrecipient to repay questioned/disallowed costs will result in a withholding of payments from the Subrecipient either during a program year or at year-end financial close-out.

ACTION

All WDACS Subrecipients must ensure that the requirements described herein are communicated throughout the operations, management and governance structure of their respective organization and that this Directive is adhered to until further notice.

INQUIRIES

Inquiries regarding this directive and the policies and procedures described herein should be directed to smaxberry@wdacs.lacounty.gov.

A handwritten signature in black ink, appearing to read "Paul Goldman", is written over a horizontal line.

**Paul Goldman, Assistant Director
Contracting Services Branch**